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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

DOD-2018-HA-0028

RIN 0720-AB72

TRICARE; Addition of Physical Therapy Assistants and Occupational Therapy Assistants as

TRICARE-Authorized Providers

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to add certified or licensed physical therapy assistants (PTAs) and occupational therapy assistants (OTAs) as TRICARE-authorized providers to engage in physical therapy or occupational therapy under the supervision of a TRICARE-authorized physical therapist or occupational therapist in accordance with Medicare's rules for supervision and qualification when billed by under the supervising therapist's national provider identification number. This rule will align TRICARE with Medicare's policy, which permits PTAs or OTAs to provide physical or occupational therapy when supervised by and billed under a licensed or certified physical therapist or occupational therapist.

DATES: Written comments received at the address indicated in the **ADDRESSES** section by INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be accepted.

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ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either of the following methods:

- Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at http://www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Erica Ferron, Defense Health Agency, Medical Benefits and Reimbursement Division, 303-676-3626 or erica.c.ferron.civ@ mail.mil.

SUPPLEMENTARY INFORMATION: I. Executive Summary and Overview

A. Purpose of the Proposed Rule

This proposed rule implements section 721 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA-18), and advances two of the components of the Military Health System's quadruple aim of improved readiness and better health. The TRICARE Basic benefit currently includes physical therapy (PT) and occupational therapy (OT) services rendered by TRICARE-authorized providers within the scope of their license when prescribed and monitored by a physician, certified physician assistant, or certified nurse

practitioner. Allowing authorized physical therapists and occupational therapists to include as covered services those services of qualified assistants performing under their supervision may increase access to PT and OT services, and increase beneficiary choice in provider selection. Physical therapists and occupational therapists will be available to attend to more complex tasks for TRICARE beneficiaries, delegating to assistants simpler tasks for which they are licensed or certified to carry out. Adding coverage of services by authorized therapy assistants increases access at the same time the Agency anticipates that an active and aging beneficiary population will increasingly use these services.

B. Summary of the Major Provisions of the Proposed Rule

The major provisions of the proposed rule are:

- The addition of licensed or certified PTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 Code of Federal Regulations (CFR) 484.4). Services must be furnished under the supervision of and billed by a licensed or certified TRICARE-authorized physical therapist.
- The addition of licensed or certified OTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 CFR 484.4). Services must be furnished under the supervision of and billed by a licensed or certified TRICARE-authorized occupational therapist.

C. Costs and Benefits

PT and OT services are covered benefits of the TRICARE program, authorized at 32 CFR 199.4. We estimate that as a result of this rule, there will be a one-percent increase in the use of PT and OT services. The cost of increased utilization, along with first-year implementation costs of \$350,000, is estimated at \$20 million over five years.

The financial effect of this rule is not in the nature of economic costs or imposition of private expenditures to comply with Federal regulations. Rather, the rule involves fairly modest changes in federal health benefits payments. Consistent with OMB Circular A-4, such economic effects are considered "transfer payments" caused by Federal budget action, rather than regulatory benefits or costs that require additional analysis.

II. Discussion of Proposed Rule

A. Introduction and Background

Title 32 CFR 199.4(c)(3)(x) states that assessment and treatment services of a TRICARE authorized physical therapist or occupational therapist may be cost-shared under certain conditions when prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. In addition, 32 CFR 199.6(c)(3)(iii)(K)(2) recognizes licensed registered physical therapists and licensed registered occupational therapists as TRICARE authorized providers when PT and OT services meet the conditions and are prescribed and monitored as described in the previous sentence. This rule proposes to extend coverage of PT and OT services, as required by NDAA-18, to include services provided by licensed or certified physical or occupational therapy assistants operating under the supervision of a TRICARE-authorized physical therapist or occupational therapist.

PTAs - Qualifications

PTAs typically hold an associate's degree in physical therapy and provide therapeutic interventions such as posture stabilization and therapeutic massage, but may not evaluate patients or create or alter treatment plans. This rule proposes to tie the qualifications of PTAs under the TRICARE program to Medicare's requirements as codified at 42 CFR 484.4.

PTAs – Supervision Requirements

Under this rule, TRICARE's supervision requirements match Medicare's. The DHA intends, in implementing instructions, to follow Medicare's requirements as found within Medicare's Benefit Policy Chapter 15.6 Part C and other issuances regarding supervision of PTAs. Direct supervision (i.e., the supervising physical therapist is in the room with the PTA) will be required in a private practice setting, whereas general supervision (i.e., the supervising physical therapist is not present but is available and remains responsible for the course of treatment) will be required in most other instances. In cases of general supervision, the supervising physical therapist will be required to make an onsite supervisory visit at least once every 30 days. In cases where state or local supervision laws are more stringent, the DHA will require physical therapists and the PTAs they supervise to follow state or local laws. Services provided by physical therapy aides or other personnel, even if under the supervision of a qualified physical therapist or physical therapy assistant, are not covered. Services provided by PTAs incident to services provided by physicians or other licensed or qualified providers other than physical therapists are not covered, as only physical therapists can supervise PTAs. If Medicare makes changes to its supervision requirements, the DHA will evaluate the changes and determine whether to make similar changes; any changes deemed appropriate shall be added to the implementing instructions.

PTAs – Reimbursement Requirements

This rule proposes to require services provided by the TRICARE-authorized PTA to be billed under the TRICARE-authorized supervising physical therapist's provider identification (ID). The DHA intends, in implementing instructions, to follow Medicare's requirements as found within Medicare's Benefit Policy Chapter 15.6 Part C and other issuances regarding reimbursement of services provided by PTAs. Services provided by a PTA above the skill-

level of a PTA shall not be reimbursed. This includes, but is not limited to, evaluations and re-evaluations. Services provided by a PTA beyond the scope permitted by state or local law shall not be reimbursed.

OTAs - Qualifications

Occupational therapy assistants (OTAs) typically hold an associate's degree in occupational therapy and provide therapeutic interventions such as assisting in the development of motor skills in children with developmental disabilities or aiding adults in overcoming work-related injuries. OTAs may not evaluate patients or create or alter treatment plans. This rule proposes to tie the qualifications of OTAs under the TRICARE program to Medicare's requirements as codified at 42 CFR 484.4.

OTAs – Supervision Requirements

Under this proposed rule, TRICARE's supervision requirements match Medicare's. The DHA intends, in implementing instructions, to follow Medicare's requirements as found within Medicare's Benefit Policy Chapter 15.6 Part C and other issuances regarding supervision of OTAs. Direct supervision (i.e., the supervising occupational therapist is in the room with the OTA) will be required in a private practice setting, whereas general supervision (i.e., the supervising occupational therapist is not present but is available and remains responsible for the course of treatment) will be required in most other instances. In cases of general supervision, the supervising occupational therapist will be required to make an onsite supervisory visit at least once every 30 days. In cases where state or local supervision laws are more stringent, the DHA will require occupational therapists and the OTAs they supervise to follow state or local laws. Services provided by occupational therapy aides or other personnel, even if under the supervision of a qualified occupational

therapist or occupational therapy assistant, are not covered. Services provided by OTAs incident to services provided by physicians or other licensed or qualified providers other than occupational therapists are not covered, as only occupational therapists can supervise OTAs. If Medicare makes changes to its supervision requirements, the DHA will evaluate the changes and determine whether to make similar changes; any changes deemed appropriate shall be added to the implementing instructions.

OTAs – Reimbursement Requirements

This rule proposes to require services provided by a TRICARE-authorized OTA to be billed under the TRICARE-authorized supervising occupational therapist's provider ID. The DHA intends, in implementing instructions, to follow Medicare's requirements as found within Medicare's Benefit Policy Chapter 15.6 Part C and other issuances regarding reimbursement of services provided by OTAs. Services provided by an OTA above the skill-level of an OTA shall not be reimbursed. This includes, but is not limited to, evaluations and re-evaluations. Services provided by an OTA beyond the scope permitted by state or local law shall not be reimbursed.

Updated Referral Definition

In order to fully implement section 721 of the NDAA for 2018, DHA is updating the definition of referrals to remove the limitation that only physicians can make referrals and to distinguish between necessary referrals for general benefit coverage and referrals required under TRICARE Prime for Prime enrollee care. All referral requirements are provided in the regulations and in the implementing instructions.

III. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year).

We estimate that the effects of the provisions that would be implemented by this proposed rule would have an impact of approximately \$20 million over five years. As a result, this rule is not significant and is not a major rule under the Congressional Review Act. Executive Order (E.O.) 13771, "Reducing Regulation and Controlling Regulatory Costs"

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A-4, this proposed rule does not involve regulatory costs subject to E.O. 13771.

Public Law 104-4, Section 202, "Unfunded Mandates Reform Act"

Section 202 of Public Law 104-4, "Unfunded Mandates Reform Act," requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. The current

threshold is approximately \$140 million. We do not expect this proposed rule to result in any one-year expenditure that would meet or exceed this amount.

Public Law 96-354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601)

Public Law 96-354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This proposed rule does not contain a "collection of information" requirement, and does not impose additional information collection requirements on the public under Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

Executive Order 13132, "Federalism"

E.O. 13132, "Federalism," requires that an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It has been certified that this proposed rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199–[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended by revising the definition of "referral."

§ 199.2 Definitions.

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Referral. The act or an instance of referring a TRICARE beneficiary to another authorized provider to obtain necessary medical treatment. Generally, when a referral is required to qualify health care as a covered benefit, only a TRICARE-authorized physician may make such a referral unless this regulation specifically allows another category of TRICARE-authorized provider to make a referral as allowed within the scope of the provider's license. In addition to referrals which may be required for certain health care to be a covered TRICARE benefit, the TRICARE Prime program under § 199.17 generally requires Prime enrollees to obtain a referral for care through a primary care manager (PCM) or other authorized care coordinator to avoid paying higher deductible and cost-sharing for otherwise covered TRICARE benefits.

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- 3. Section 199.6 is amended by redesignating paragraph (c)(3)(iii)(K)(2)(ii) as paragraph (c)(3)(iii)(K)(2)(iii); revising paragraph (c)(3)(iii)(K)(2)(i); and adding a new paragraph (c)(3)(iii)(K)(2)(ii) to read as follows:
- § 199.6 TRICARE-authorized providers.

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(c) * * *

(3) * * *

(iii) * * *

(K) * * *

(2) * * *

(i) Licensed registered physical therapist (PT), including a licensed or certified physical therapy

assistant (PTA) performing under the supervision of a TRICARE-authorized PT. Services

provided by a PTA shall be included in the fee of the supervising PT. PTAs shall meet the

qualifications specified by Medicare (42 CFR 484.4) and the Director, DHA, shall issue policy

adopting, to the extent practicable, Medicare's requirements for PTA supervision.

(ii) Licensed registered occupational therapist (OT), including a licensed or certified

occupational therapy assistant (OTA) performing under the supervision of a TRICARE

authorized OT. Services provided by an OTA shall be included in the fee of the supervising OT.

OTAs shall meet the qualifications specified by Medicare (42 CFR 484.4) and the Director,

DHA, shall issue policy adopting, to the extent practicable, Medicare's requirements for OTA

supervision.

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Dated: December 14, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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